

DDCM Broome Realty LCC v Malhotra

2019 NY Slip Op 32523(U)

August 26, 2019

Supreme Court, New York County

Docket Number: 657411/2017

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

-----X

DDCM BROOME REALTY LLC AND SMGB BROOME LLC,

Plaintiffs,

- v -

ADITI MALHOTRA, SUSHIL KUMAR AND ARTISAN
CHOCOLATES, LLC,

Defendants.

-----X

INDEX NO. 657411/2017
MOTION DATE 12/19/2018
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to REARGUE.

By a Decision and Order dated November 13, 2018, this Court denied Plaintiffs DDCM Broome Realty LLC and SMBG Broome LLC's ("Plaintiffs'") motion for default judgment because they "failed to submit an affirmation of additional service to either the individual defendants or the corporation defendant, pursuant to CPLR §§ 3215 (g)(3)(i) and (g)(4)(i)." (NYSCEF Doc. No. 24).

Now, Plaintiffs seek leave to reargue the denial of that motion pursuant to CPLR § 2221(d), on the ground that they submitted an affidavit of service which attested to additional service being made on Defendants Aditi Malhotra, Sushil Kumar, and Artisan Chocolates, LLC ("Defendants'") in accordance with CPLR §§ 3215 (g)(3)(i) and (g)(4)(i).

Plaintiffs' motion for leave to reargue is granted, and on reargument Plaintiffs' motion for default judgment is granted in part.

In light of the Affidavit of Service contained in Plaintiffs' moving papers (NYSCEF Doc. No. 9), it appears that the requirements of CPLR §§3215 (g)(3)(i) and (g)(4)(i) were satisfied in this case. As such, on reconsideration, Plaintiffs are entitled to default judgment against Defendants with respect to liability.

While Plaintiffs have demonstrated entitlement to default judgment on liability, they have not provided sufficient basis for a default judgment as to the monetary relief sought in the Complaint. CPLR §3215 permits entry of a default judgment only when the "claim is for a sum certain or for a sum which can by computation be made certain." "The term 'sum certain' in this context contemplates a situation in which, once liability has been established, there can be no dispute as to the amount due," such that "the clerk then functions in a purely ministerial capacity." *Reynolds Sec., Inc. v. Underwriters Bank & Tr. Co.*, 44 N.Y.2d 568, 572 (1978).

The amount due under Plaintiffs' claims is not a sum certain. For example, the first cause of action in the Complaint alleges that Defendants are in arrears totaling \$69,349.06 (Complaint ("Compl.") ¶¶19, 34) (NYSCEF Doc. No. 1), while the motion for default judgment sets that amount at \$102,389.06. (Braverman Aff. ¶15). The difference is unexplained. And neither amount is supported by rent bills or any other form of evidence. Plaintiffs' other two causes of action in the Complaint, meanwhile, are for sums "not yet ascertainable." (Compl. ¶¶37, 41).

Accordingly, the Court grants the default against Defendants on the question of liability and directs the parties to an inquest, before a Special Referee, to hear and determine the amount of damages, fees, and costs, if any, to which Plaintiffs are entitled.

Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR §5015 or CPLR §317, or any other applicable law.

Therefore, it is:

ORDERED that Plaintiffs' motion for leave to reargue the Court's Decision and Order dated November 13, 2018 (NYSCEF Doc. No. 24) is Granted; it is further

ORDERED that Plaintiffs' motion for default judgment is Granted as to liability; it is further

ORDERED that this matter is directed to an Inquest before a Judicial Hearing Officer ("JHO") or Special Referee who shall hear and determine Plaintiffs' entitlement to damages, fees, and costs; it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the amount of damages to which Plaintiff is entitled; it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that Plaintiffs' counsel shall serve a copy of this order with notice of entry on Defendants and that counsel for Plaintiffs shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter,

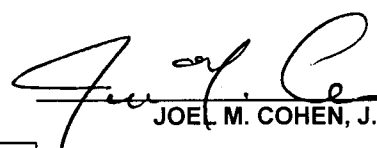
the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

8/26/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE